

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 7087	DATE	11/18/2004
CASE TITLE	Andre Ferguson vs. Cook County Jail		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

## DOCKET ENTRY:

- (1)  Filed motion of [ use listing in "Motion" box above.]
- (2)  Brief in support of motion due \_\_\_\_\_.
- (3)  Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5)  Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
  FRCP4(m)  Local Rule 41.1  FRCP41(a)(1)  FRCP41(a)(2).
- (10)  [Other docket entry] Memorandum Opinion and Order. For the foregoing reasons, this action must be and is dismissed in any event for failure to state a claim upon which relief may be granted. In addition, Ferguson is warned that if any prisoner has had a total of three federal cases or appeals dismissed as frivolous, malicious or failing to state a claim, he may not file another suit in federal court without prepaying the entire \$150 filing fee unless he is in imminent danger of serious physical injury (see Section 1915(g)). This is the first of those Section 1915(g) "strikes."
- (11)  [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	U.S. DISTRICT COURT NOV 18 2004 13 2 NOV 18 PM 2004 U.S. DISTRICT COURT NOV 18 2004 13 2 NOV 18 PM 2004 Date/time received in central Clerk's Office	number of notices <b>NOV 19 2004</b> date docketed <b>a</b> docketing deputy initials 11/18/2004 date mailed notice <b>SN</b> mailing deputy initials	Document Number

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ANDRE FERGUSON, )  
Plaintiff, )  
v. ) No. 04 C 7087  
COOK COUNTY JAIL, )  
Defendant. )

MEMORANDUM OPINION AND ORDER

**DOCKETED**  
NOV 19 2004

Andre Ferguson ("Ferguson"), an inmate in custody at Menard Correctional Center ("Menard"), brings this pro se civil rights action pursuant to 42 U.S.C. §1983 ("Section 1983"), alleging that he had to sleep on the floor when he was in custody at the Cook County Jail ("Jail") earlier this year. This Court's brief November 15, 2004 memorandum order ("Order") has earlier ordered Ferguson to comply with the provisions of 28 U.S.C. §1915.<sup>1</sup> But under the preliminary screening provision of Section 1915A(a) this Court is also required to dismiss this prisoner action if it determines that it is frivolous or malicious or fails to state a claim on which relief may be granted, or if it seeks monetary relief against a defendant who is immune from such relief (Section 1915A(b)). Here, even when Ferguson's factual allegations are accepted as true, this Court finds that the Complaint fails to state a claim as a matter of law.

But before this opinion turns to that subject, another

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<sup>1</sup> All further references to Title 28's provisions will simply take the form "Section--."

independent basis for dismissal should be addressed. This Court has been apprised by the staff attorneys' office assigned to deal with prisoner lawsuits that he was previously plaintiff in Case No. 02 C 1063 (which asserted a claim comparable to the present one, based on the conditions affecting Ferguson's earlier sojourn at the Jail) and Case No. 02 C 2077, each of which was also assigned to this Court's calendar. Both cases ended with orders (entered on April 17, 2002) that confirmed that until Ferguson paid the remaining balances of the aggregate \$300 in filing fees in the two cases, no further filings would be accepted from him. According to the Clerk's Office records, Ferguson has not complied with that condition, so this Court could properly reject the current Complaint and this action on that basis.

Even apart from that consideration, however, it has already been indicated that this action is doomed in substantive terms. What follows explains why.

Ferguson is one of many Jail detainees who have brought pro se complaints over the years, pursuant to Section 1983, relating to having to sleep on the floor at the jail. There is apparently an ill-founded myth at the Jail that inmates who sleep on the floor are entitled to collect damages in federal court.

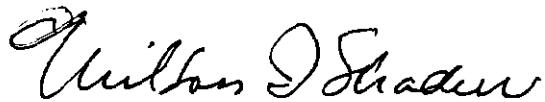
To state a conditions-of-confinement claim of constitutional significance, the challenged condition must amount to "punishment" (Bell v. Wolfish, 441 U.S. 520, 535 (1979)). That determination is measured by the same yardstick whether

considered in the context of the Due Process Clause or of the Eighth Amendment (Zentmeyer v. Kendall County, Ill., 220 F.3d 805, 810 (7<sup>th</sup> Cir. 2000)). Punishment in the constitutional sense requires something more than routine discomfort (Rhodes v. Chapman, 452 U.S. 337, 349 (1981)): "genuine deprivations and hardship over an extended period of time" (Bell, 441 U.S. at 542; accord, Hudson v. McMillian, 503 U.S. 1, 8-9 (1992) ("extreme deprivations")); Henderson v. Sheahan, 196 F.3d 839, 845 (7<sup>th</sup> Cir. 1999) (same)).

Being assigned to sleep on the floor, while undesirable and unfortunate, is not itself enough to give rise to an arguable due process claim of punishment (Hines v. Sheahan, 845 F.Supp. 1265, 1269 (N.D. Ill. 1994); Powell v. Cook County Jail, 814 F.Supp. 757, 759 (N.D. Ill. 1993) and cases cited there). Although Ferguson identifies some unpleasant collateral consequences of that situation, none of them rose (or, perhaps more accurately, fell) to the level of a constitutional violation. Nor does Ferguson allege that any official at the Jail intended maliciously to subject him to pain or suffering (see Farmer v. Brennan, 511 U.S. 825, 837 (1994)). Both the objective condition and the subjective intent of deliberate indifference must be shown to state a Section 1983 claim (Farmer, *id.*). Finally, as this Court previously advised Ferguson in a memorandum order issued in his first 2002 lawsuit (and as it has repeated in the Order), the "Cook County Jail" is not a suable entity.

For the foregoing reasons, this action must be and is dismissed in any event for failure to state a claim upon which relief may be granted. In addition, Ferguson is warned that if any prisoner has had a total of three federal cases or appeals dismissed as frivolous, malicious or failing to state a claim, he may not file another suit in federal court without prepaying the entire \$150 filing fee unless he is in imminent danger of serious physical injury (see Section 1915(g)). This is the first of those Section 1915(g) "strikes."

If Ferguson wishes to appeal this dismissal, he may file a notice of appeal with this Court within 30 days of the entry of judgment (Fed. R. App. P. 4(a)(4)). If Ferguson does choose to appeal, he will be liable for the \$255 appellate filing fee (though perhaps in installments under Section 1915) regardless of the outcome of the appeal (Lucien v. Jockisch, 133 F.3d 464, 467 (7<sup>th</sup> Cir. 1998)). Lastly, if the appeal is found to be nonmeritorious, Ferguson may also accumulate another "strike" under Section 1915(g).<sup>2</sup>



Milton I. Shadur  
Senior United States District Judge

Date: November 18, 2004

<sup>2</sup> Ferguson must understand that this dismissal does not affect his ongoing duty to pay the remaining filing fees in the two 2002 lawsuits and the \$150 filing fee in this case. In the latter respect, the earlier Order in this case remains in effect so as to facilitate the necessary calculations under Section 1915.